No. 764

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No. 15387

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United States
Court of Appeals
for the Ninth Circuit

JO EISINGER and LORAIN B. EISINGER,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court of the United States

No. 15387

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JO EISINGER and LORAIN B. EISINGER,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

ROSENTHAL AND NORTON, by
NORMAN GOODMAN,
242 North Canon Drive,
Beverly Hills, Calif.,

For the Petitioner.

CHARLES K. RICE,
Assistant U. S. Attorney General;

LEE A. JACKSON,
Attorney, Department of Justice,
Washington 25, D. C.,

For the Respondent.

The Tax Court of the United States

Docket No. 47,871

JO EISINGER AND LORAIN B. EISINGER,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

10/1/56—Assigned to Judge LeMire, recalled to duty.

DOCKET ENTRIES

1953

Apr. 17—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 20—Copy of Petition served on General Counsel.

June 3—Answer filed by General Counsel.

June 3—Request for hearing in Los Angeles, Calif., filed by General Counsel.

June 10—Notice issued placing proceeding on Los Angeles calendar. Service of Answer and Request made.

1954

May 5—Hearing set June 30, 1954, Los Angeles, Calif.

July 8—Hearing had before Judge LeMire on the merits. Stipulation as to facts to be filed in Washington, D. C., on or before August 9, 1954. Briefs due September 24, 1954. Replies due October 25, 1954.

1954

July 27—Transcript of Hearing 7/8/54 filed.

Aug. 13—Stipulation as to Facts filed.

Sept. 13—Brief filed by petitioner. 9/27/54—Copy served.

Sept. 24—Brief filed by General Counsel.

1956

Feb. 29—Memorandum findings of Fact and Opinion filed, Judge LeMire. Decision will be entered under Rule 50. 3/1/56—Copy served.

June 7—Entry of appearance of Norman Goodman as counsel filed.

June 12—Agreed computation for entry of decision filed.

June 13—Decision entered, Judge LeMire, Div. 5.

Sept. 10—Petition for Review by U. S. Court of Appeals for the Ninth Circuit filed by petitioner.

Sept. 10—Proof of Service filed.

Sept. 11—Notice of filing petition for review, with proof of service thereon, filed.

Sept. 24—Designation of contents of record on review, with proof of service thereon, filed by petitioner.

Oct. 12—Order extending time to file the record on review and docket the petition for review to 12/9/56, entered. Served 10/15/56.

The Tax Court of the United States

Docket No. 47,871

JO EISINGER AND LORAINE B. EISINGER, Husband and Wife,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE.

Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, A:R: 90D:LHP, dated January 29, 1953, and as a basis for their proceeding allege as follows:

1. Petitioners are individuals, husband and wife, with their present residence at Hotel Claridge, Avenue des Champs Elysees, Paris, France. The returns for the periods here involved were filed with the collector for the Los Angeles District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioners, care of their attorney, Aaron B. Rosenthal, 416 West Eighth Street, Suite 1009-16, Los Angeles 14, California, on January 29, 1953.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar years 1949 and 1950, in the respective amounts of $3,433.58, for the calendar year 1949, and in the

amount of $925.76, for the calendar year 1950; and that, of the deficiency for the year 1949, all thereof is in dispute; that of the deficiency for the year 1950, all thereof is in dispute.

4. With certain determinations ,made, as set forth in said Exhibit A, petitioners herein make no objections, nor do they contest these. In fact, these were arrived at after conferences between petitioners and the staff of the Hollywood, California, office of the Director's Office. For example:

Under the heading "Adjustments to Net Income. Taxable Year Ended December 31, 1949," are certain items, "Unallowable deductions and additional income," enumerated from (a) to (f), both inclusive. Petitioners acknowledge the correctness of item (a), being the "Ordinary income from sale of story, 'Confidential Squad,' $11,036.68," but maintain for reasons hereinafter set forth that this income should be considered as income subject to the provisions of Section 107 (a) of the Internal Revenue Code. Also, petitioners acknowledge the correctness of, and do not contest, the following other items: (b) "Automobile expense disallowed, $289.24"; (c) "Taxes disallowed, $100.00"; (d) "Unemployment insurance disallowed, $9.00"; (e) "Medical expense disallowed, $695.82." Petitioners emphatically reject and contest (f) "Alimony disallowed, $1,925.00."

Under the heading, "Reduction of Income," appears item (g): "Long-term capital gain from sale of story 'Confidential Squad,' $5,141.00." Petition-

ers consent to the disallowance of this item because they acknowledge now, as they did in the informal conferences with the revenue staff referred to above, that it was improper to claim a long-term capital gain in respect of the net proceeds of the sale of the story. As indicated above, a different treatment of the income from the sale of the story is sought by petitioners.

Under the heading "Explanation of Adjustments" are explanations of the computations of the various items set forth under "Adjustments to Net Income." With all of these explanations petitioners are in accord save as to item (*1*), which relates to the disallowed alimony in the amount of $1,925.00.

For the reasons set forth above in this paragraph, petitioners object to and reject the "Computation of Tax, Taxable Year Ended December 31, 1949," as set forth in said Exhibit A. More specifically, petitioners point out that, while alimony was disallowed in an amount of $1,925.00, on the ground that it actually was for the support of two minor children and not for alimony, the computation augments the exemptions by adding to those claimed by petitioners in their 1949 return, an additional amount representing deductions for the two children. Furthermore, petitioners maintain that only a portion of the income derived from the sale of the story "Confidential Squad" should have been included in the computation, whereas all of the net income was included therein for the year 1949.

Under the heading "Adjustments to Net Income,

Taxable Year Ended December 31, 1950," is an item, "Unallowable deduction: (a) Alimony disallowed, $3,364.50." Petitioners reject this disallowance for the same reasons and on the same grounds that they reject the disallowance of the item of alimony in the amount of $1,925.00 in the 1949 return. The same basic questions of law are involved in each such disallowance and petitioners' position with respect thereto. Therefore, petitioners reject the "Computation of Tax, Taxable Year Ended December 31, 1950," as same appears in said Exhibit "A"; this for these reasons: (1) that the tax itself should be altered by allowing the disallowed alimony payments, and (2) by diminishing the exemptions of $4,200.00 by eliminating the two exemptions for the two minor children which have been arbitrarily included in the computation.

5. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously determined that the entire net income of $11,036.68 attributed to the sale of the story, "Confidential Squad," was subject to taxation in the calendar year 1949 instead of determining that said income was subject to Section 107 (a) of the Internal Revenue Code and that only a portion thereof, substantially 33⅓ per cent thereof, should have been included in the gross income of petitioners for the year 1949.

(b) With respect to the calendar years 1949 and 1950, the Commissioner erroneously determined that

a portion of the payments made by petitioner, Jo Eisinger, to his former wife, Wilhelmina Eisinger, in said years, namely, $1,925.00 in 1949 and $3,364.50 in 1950, represent payments made for the support of the said Jo Eisinger's two minor sons and did not constitute proper deductions under the provisions of Section 23 (u) of the Internal Revenue Code.

6. The facts upon which petitioners rely as the basis for this proceeding are as follows:

Upon information and belief:

Petitioner, Jo Eisinger, first conceived the idea for "Confidential Squad" in 1945 as something for radio. Said petitioner wrote several brief synopses thereof and registered an early one of these, under the title "Confidential Squad," with the Screen Writers' Guild. After several months, said petitioner wrote an initial script and discussed it with his agents at Famous Artists, Los Angeles County, California. They recommended changes and said petitioner then made several other versions of the script and had a script satisfactory to him at the close of 1946. Said petitioner then discussed this script with Hubbel Robinson, vice president of Columbia Broadcasting System, while at the Beverly Hills Hotel in Beverly Hills, California. Mr. Robinson rejected the idea for radio, but suggested that it might be rewritten for television. Said petitioner then wrote a number of scripts embodying the idea of "Confidential Squad" for television, always in conference with his said agent, spending a great

deal of time in 1947 in this activity, and being baffled by the many production problems that arose. He wrote probably a dozen scripts around the idea in that year. In 1948, said petitioner first attempted to use his material at hand by writing it as a long short story for a magazine, but abandoned the work at the instance of one of his said agents. Then, Edward Lasker, who became interested in the idea, arranged to have said petitioner introduced to the Confidential Squad of the Police Force of the City of New York, and, as a result, said petitioner spent about six weeks in New York City with this squad, obtaining from this experience the material which he decided to incorporate into a screen play. Said petitioner then returned to California and there wrote the screen play. Lasker then found that he could not finance the production, so said petitioner in 1949 sold the script to Universal-International, which finally made the film under the title "The Sleeping City." The sale to Universal-International was made in 1949. So, said petitioner maintains, the script represents a constant labor over a period of more than three years prior to the date of its sale, and all of the proceeds of sale were received in the year of sale.

Prior to May 26, 1949, the said Jo Eisinger and Wilhelmina Eisinger were husband and wife and were the parents of two sons, Carl, who was then 16 years old, and Lloyd, who was then 10 years old. The boys were in the actual custody of their mother, who was living in Dade County, Florida. Mr. Eisinger was living in Los Angeles County, Cali-

fornia. As a consequence of domestic difficulties between them a divorce action was started by Wilhelmina Eisinger in Dade County, and following that, the parties effected a written property settlement agreement and an agreement affecting the care and custody of the two minor sons, under date of March 28, 1949, and this later was modified by a written modification thereof, dated April 29, 1949, by the terms of which paragraphs 4 and 5 of the original agreement were amended by the substitution of new paragraphs 4 and 5, all of the rest of the original agreement being retained. This agreement, with its modification, was incorporated in a final decree entered in the divorce action on May 26, 1949. A true and correct copy of this final decree, embodying the original agreement and its modification, is attached hereto as Exhibit "B."

The payments made by the said Jo Eisinger to the said Wilhelmina Eisinger, which are the subject of the Commissioner's determination, were made pursuant to the said property settlement agreement and said final decree of divorce embodying and approving same. It is contended that all of these payments were made to Wilhelmina Eisinger as alimony payments.

Wherefore, petitioners pray that this Court may hear the proceeding and determine:

(a) With respect to the 1949 income tax return, that (1) petitioners should be permitted to account therein for only one-third of the net income received

in 1949 for the sale of the story, "Confidential Squad," instead of the whole net proceeds of sale, and (2) that the entire disallowed item of $1,925.00 be restored to the deductions permitted, and that any deductions made by the Commissioner as a deduction for the two minor children of petitioner, Jo Eisinger, be eliminated; and

(b) With respect to the 1950 income tax return, that the entire claimed deficiency in the amount of $925.76 be disallowed.

/s/ AARON B. ROSENTHAL,
Counsel for Petitioners.

Duly verified.

EXHIBIT "A"

Form 1230

U. S. Treasury Department
Office of the Director of Internal Revenue
Head, Audit Division
417 South Hill Street
Los Angeles, California

In reply refer to:
A:R:90D:LHP

Jan. 29, 1953.

Mr. Jo Eisinger and
Mrs. Loraine B. Eisinger,
Husband and Wife,
c/o Mr. Aaron B. Rosenthal,
416 West 8th Street, Suite 1009-16,
Los Angeles 14, California.

Dear Mr. and Mrs. Eisinger:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1949, and December 31, 1950, discloses a deficiency of $4,359.34, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days of the date of the mailing of this letter you may file a petition with the Tax Court of the United States at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Director of Internal Revenue, Audit Division, 417 South Hill Street, Los Angeles 13, California. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

JUSTIN F. WINKLE,
Acting Commissioner;

By R. A. RIDDELL,
Director.

Enclosures:
Statement
Form 1276
Agreement Form

A:R:90DLLHP

Mr. Jo Eisinger and Mrs. Loraine B. Eisinger
Husband and Wife
c/o Aaron B. Rosenthal
416 West 8th Street, Suite 1009-16
Los Angeles 14, California

Tax Liability for the Taxable Years Ended
December 31, 1949, and December 31, 1950

Year		Deficiency
1949	Income Tax	$3,433.58
1950	Income Tax	925.76
	Total	$4,359.34

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated November 18, 1952.

Your income tax returns for the taxable years 1949 and 1950 disclose payments of $3,850.00 and $6,677.00, respectively, made to Wilma Eisinger, former wife of Jos. Eisinger, which you deducted from your income as alimony. It has been determined that of such payments the amounts $1,925.00 and $3,364.50 represent payment for the support of Jo Eisinger's two minor

sons for the years 1949 and 1950, respectively, which do not constitute proper deductions under the provisions of section 23(u) of the Internal Revenue Code. Appropriate adjustment is accordingly made herein to disallow the excessive alimony claimed, and to allow exemptions for the two sons for the year 1950, not claimed in your return for such year.

Adjustment to Net Income
Taxable Year Ended December 31, 1949

Net Income as disclosed by return		$26,176.14
Unallowable deductions and additional income:		
(a) Ordinary income from sale of story "Confidential Squad"	$11,036.68	
(b) Automobile expense disallowed	289.24	
(c) Taxes disallowed	100.00	
(d) Unemployment insurance disallowed	9.00	
(e) Medical expense disallowed	695.82	
(f) Alimony disallowed	1,925.00	14,055.74
Total		$40,231.88
Reduction of income:		
(g) Long-term capital gain from sale of story "Confidential Squad"		5,141.00
Net income adjusted		$35,090.88

Explanation of Adjustments

(a) and (g) In your income tax return for the calendar year 1949 you reported a net gain in the amount of $10,282.00 from the sale of a story entitled "Confidential Squad." Fifty per cent of this amount, or $5,141.00, you considered subject to tax as capital gain under the provisions of section 117 of the Internal Revenue Code. It is held that ordinary income in the amount of $11,036.68 was realized by you from this transaction within the meaning of the Internal Revenue Code and your income is increased accordingly. The amount of $11,036.68 is computed as follows:

Sale price of story, as shown by return			$15,001.00
Less expenses:			
Agent's commission (per return)		$ 1,500.00	
Travel expense (per return)		405.00	
Hotel and entertainment expenses (per return)	$2,814.00		
Less: Amount unsubstantiated	754.68	2,059.32	3,964.32
Ordinary income, as determined			$11,036.68

The reported long-term capital gain of $5,141.00 from the sale of the above-mentioned story is eliminated from your income.

(b), (c) and (d) The deductions claimed in your return for the following items are disallowed to the extent shown below due to lack of substantiation that such disallowed amounts constitute proper deductions under section 23 of the Internal Revenue Code:

Item	Amount Claimed in Return	Amount Allowable	Amount Disallowed
Automobile expense	$715.99	$426.75	$289.24
Sales tax	649.60	549.60	100.00
Unemployment insurance	39.00	30.00	9.00

(e) It is determined that the correct deduction for medical expenses is the amount of $1,561.15, in lieu of $2,256.97, the amount claimed in your return. The excessive amount claimed, $695.82, is disallowed. The amount of $1,561.15 is computed as follows:

Total medical expense, as shown by return	$3,937.91
Less: 5% of $47,535.74, adjusted gross income as corrected	2,376.76
Medical deduction allowable	$1,561.15

(f) This adjustment has been previously explained.

Computation of Tax
Taxable Year Ended December 31, 1949

Net income adjusted		$35,090.88
Less: Exemptions		3,600.00
Balance, subject to surtax and normal tax		$31,490.88
One-half of $31,490.88		$15,745.44
Tentative normal tax and surtax	$ 5,080.36	
Less reduction under Sec. 12(c), I.R.C.	629.64	
Total normal tax and surtax on one-half of net income		$ 4,450.72
Combined normal tax and surtax ($4,450.72 x 2)		$ 8,901.44
Correct income tax liability		$ 8,901.44
Income tax liability shown on return, Account No. 3250307		$ 5,467.86
Deficiency of income tax		$ 3,433.58

Adjustment to Net Income
Taxable Year Ended December 31, 1950

Net income as disclosed by return	$32,622.33
Unallowable deduction:	
(a) Alimony disallowed	3,364.50
Net income adjusted	$35,986.83

Explanation of Adjustment

(a) This adjustment has been previously explained.

Computation of Tax
Taxable Year Ended December 31, 1950

Net income adjusted	$35,986.83
Less: Exemptions	4,200.00
Balance, subject to surtax and normal tax	$31,786.83

One-half of $31,786.83		$15,893.42
Tentative normal tax and surtax	$5,149.91	
Less reduction under Sec. 12(c), I.R.C.	479.49	
Total normal tax and surtax on one-half of net income		$ 4,670.42
Combined normal tax and surtax ($4,670.42 x 2)		$ 9,340.84
Correct income tax liability		$ 9,340.84
Income tax liability shown on return, Account No. 3259639		$ 8,415.08
Deficiency of income tax		$ 925.76

EXHIBIT "B"

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in Chancery

No. 112550-C

WILHELMINA EISINGER,

Plaintiff,

vs.

JOSEPH EISINGER,

Defendant.

FINAL DECREE

This cause coming on to be heard before me and it appearing to the Court that said cause is at issue

on the amendment to the bill of complaint of the plaintiff and the answer of the defendant and the Court having heard the testimony of the plaintiff and her witnesses and finding from said testimony that the equities are with the plaintiff in this cause upon a complaint thereof, it is therefore

Ordered, Adjudged and Decreed as follows:

1. That this Court has jurisdiction of the parties and the subject matter involved in this cause.

2. That the bonds of matrimony heretofore existing between the plaintiff, Wilhelmina Eisinger, and the defendant, Joseph Eisinger, be and they are hereby forever dissolved and they are forever divorced from each other, a Vinculo Matrimonii.

3. That the care, custody and control of the minor children of the parties, to wit: Carl Eisinger and Lloyd Eisinger, is hereby awarded to the plaintiff, Wilhelmina Eisinger, with the right to the defendant, Joseph Eisinger, of reasonable visitation at all times.

4. That the property settlement agreement and the property settlement agreement modification entered into between the parties, being the plaintiff Exhibits I and II and reading in words and figures as follows:

I.

Property Settlement Agreement

This Agreement, made this 28th day of March, 1949, by and between Joseph Eisinger, hereinafter

referred to as the "Husband," and Wilhelmina Eisinger, hereinafter referred to as the "Wife."

Witnesseth:

Whereas, the Wife has instituted an action for divorce against the Husband, and

Whereas, the parties desire to settle all differences between them,

Now, Therefore, in consideration of the premises and of the terms and conditions hereinafter set forth, It Is Agreed:

1. The parties shall at all times hereafter live and continue to live separate and apart, and they shall not molest nor interfere with each other, nor compel nor attempt to compel the other to cohabit or dwell with the other, and each shall be free from interference, authority and control, direct or indirect, by the other. Each party may reside at such place or places as he or she may select; and each may, for his or her separate use, benefit and estate, conduct, carry on and engage in any business, profession or employment as to him or her may seem advisable, and the avails thereof shall be his or her separate property.

2. The Wife shall have the custody of the children of the marriage, viz., Carl Eisinger, born August 24, 1933, and Lloyd Eisinger, born November 2, 1938. The Husband shall have the right of visitation at any and all times. The Husband shall also have the right to have either or both of said

sons visit him, at such place as the Husband may designate, during holiday seasons. The Wife shall at all times advise the Husband in writing of the residences and whereabouts of each and both of said sons from time to time as the same may change.

3. (a) The parties agree that there is no community property.

(b) The parties agree that each party shall own and enjoy, independent of any right of claim of the other, as his or her sole and separate property, all personal and real property belonging to him or her and now in his or her possession, or which may hereafter belong to him or her or come into his or her possession, with full power and disposition during the lifetime of each party or after death, as though he and she were unmarried.

4. The Husband agrees to pay to the Wife, by way of alimony, the sum of One Hundred Dollars ($100.00) per week, commencing upon the date of the entry of the final decree of divorce in the action presently pending between the parties in the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County, in Chancery, Number 112550-C, and weekly thereafter, and in consideration thereof the Wife agrees to support the aforesaid children. If the Wife shall fail to support either or both of said children, the Husband may pay the cost thereof and deduct the same from said weekly alimony. Said payments shall continue during the life of the Wife and shall cease upon her death or upon the death of the Husband. Upon the

remarriage of the Wife all alimony payments to her shall cease, but in lieu thereof the Husband shall pay the sum of Twenty-five Dollars ($25.00) per week for the support and maintenance of each child, of said marriage until such child shall attain the age of twenty-one (21) years, at which time the aforesaid payments for such child shall cease and terminate. Whether or not the Wife shall remarry, as each child shall attain the age of twenty-one (21) years, the aforesaid alimony shall be reduced by Twenty-five Dollars ($25.00) per week for each child thus attaining the age of twenty-one (21) years. It is the intention of the parties that when both of said children shall have attained the age of twenty-one (21) years the Husband shall pay to the Wife alimony in the sum of Fifty Dollars ($50.00) per week during the life and until her remarriage; provided, however, that no alimony shall be paid to the said Wife if the Husband shall die or if the Wife shall have meanwhile remarried or shall have died. It is also agreed that the said payments of alimony to the Wife shall be reduced by the sum of Twenty-five Dollars ($25.00) per week in the event of the death of either of said children before he shall have attained the age of twenty-one (21) years, and if both of said children shall die before attaining said age the alimony for said Wife shall be reduced by the sum of Fifty Dollars ($50.00) per week.

5. (a) The Husband agrees to pay to the Wife the following sums:

(1) Fifteen Hundred Dollars ($1500.00) on or before five (5) days from the date of notice of entry of the final decree of divorce between the parties in the action hereinbefore referred to.

(2) The sum of One Thousand Dollars ($1,000.00) on or before ninety (90) days after notice of entry of the said final decree of divorce.

(b) (1) The aforesaid sum of Twenty-five Hundred Dollars ($2500.00) is to be used by the Wife for the purpose of paying any and all bills of the Wife and as and for, and by way of counsel fees.

(2) The Wife warrants and represents that she has not incurred any obligations except those which will be paid for with the aforesaid sum of Twenty-five Hundred Dollars ($2500.00), including counsel fees to her attorneys, and that the Husband will not be called upon to pay for any debts incurred by her, and she hereby agrees to indemnify and save the Husband harmless against any and all of such debts and, in the event the Husband shall be called upon to pay any claim asserted against him by reason of a debt incurred by the Wife, he may stop paying the alimony provided for herein until the weekly alimony shall have aggregated the amount of such claim or claims.

6. (a) The Wife does and shall accept the provisions hereof in full satisfaction for her support and maintenance and for the support and maintenance of the minor children of the marriage. This

agreement constitutes a complete and final settlement of any and all claims, property rights, liabilities and obligations of the parties hereto in, on or as to each other, and each party shall have such rights in and to his or her person, earnings, income and property as though said parties had never been married to each other, save and except as herein provided, and each of the parties hereto, except as herein provided, renounces any and all claims for alimony, support, maintenance, attorney's fees and court costs which he or she might have against the other by reason of their marital status from this date henceforth.

(b) Each of the parties hereby waives, relinquishes and quitclaims to the other any and all interest he or she has or might have in and to the property or the estate held or had by the other, wherever and whenever acquired and of whatsoever nature, whether community or separate, now or hereafter and, in this connection, agrees that he or she shall at any time hereafter, as and when necessary or convenient, execute any and all papers or documents to give full effectiveness to the provisions of this agreement.

(c) Each of the parties hereby waives any and all rights or claims which he or she may have had by reason of their marital status to share in the estate of the other under the laws of succession or inheritance of the States of California or Florida or any other State, and relinquishes to the estate of the other any property which would have been

otherwise distributed to him or her by reason thereof, and each of the parties hereby waives and relinquishes to the other any right to act as administrator, administratrix, executor, executrix for the estate of the other.

(d) Each of the parties hereby releases and relinquishes any and all claims or rights that he or she may have had, which he or she now has, or which he or she may hereafter acquire in any capacity or to any extent whatever in the estate of the other party upon his or her death, by way of statutory allowance or distribution in intestacy or right of election to take against the other party's Last Will and Testament or right of dower or courtesy or community or otherwise, whether enumerated herein or not and whether under the laws of the States of California or Florida or of any State whatsoever.

7. The Wife agrees that she will present this agreement to the Court with the request that the same be ratified, affirmed and approved by the Court as its own act and made a part of the final decree of divorce in the action hereinbefore described, and that she will not ask the Court for any sum or make any request other than those herein contained. The Wife agrees that all of the rights granted her herein are conditioned upon and subject to her obtaining and entering a final decree of divorce in the action hereinbefore described at the earliest possible date, and that she will not take an appeal from the said decree, and if she shall fail to enter such final decree

of divorce at the earliest possible date in the action hereinbefore described, or if she shall take an appeal from the provisions thereof, all of the rights herein contained shall cease and terminate forthwith.

8. The parties have incorporated in this agreement their entire understanding. No oral statements nor prior written matter extrinsic to this agreement shall be in force or effect. The parties are not relying upon any representations other than those expressly set forth herein.

9. The parties hereto declare that each has had independent legal advice by counsel of his or her own selection; that each fully understands the facts and has been fully informed of his and her legal rights and liabilities; that after such advice and knowledge each believes the agreement to be fair, just and reasonable; that each signs the agreement freely and voluntarily.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written.

/s/ J. O. EISINGER,
Husband;

/s/ WILHELMINA EISINGER,
Wife.

Accepted:

FOGLE, KIRTLEY,
CONNELLY & FORDHAM,

By /s/ WM. KIRTLEY.

State of California,
County of Los Angeles—ss.

On the 28th day of March, 1949, before me, personally appeared Joseph Eisinger, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

[Seal] /s/ JULIAN C. SORIN,
Notary Public in and for the
Said County and State.

My commission expires Aug. 24, 1951.

State of Florida,
County of Dade—ss.

On the 19th day of May, 1949, before me, personally appeared Wilhelmina Eisinger, known to me to be the person who executed the foregoing instrument, and acknowledged to me that she executed the same.

/s/ LEWIS H. FOGLE, JR.,
Notary Public.

My commission expires April 23, 1951.

II.

Property Settlement Agreement—Modification

Reference is made to that certan Property Settlement Agreement dated March 28, 1949, by and between Joseph Eisinger and Wilhelmina Eisinger,

signed by Joseph Eisinger on March 28, 1949, and to be signed by Wilhelmina Eisinger concurrently with her signing this Modification thereof.

Witnesseth:

All of the terms and conditions of that certain Property Settlement Agreement dated March 28, 1949, are hereby agreed upon and confirmed except as herein specifically provided.

Paragraph 4 is hereby amended to read as follows:

4. The Husband agrees to pay to the Wife, by way of alimony, the sum of One Hundred Twenty-five Dollars ($125.00) per week, commencing upon the date of the entry of the final decree of divorce in the action presently pending between the parties in the Circuit Court of the 11th Judicial Circuit of Florida, and in and for Dade County, in Chancery, No. 112550-C, and weekly thereafter, and in consideration thereof the Wife agrees to support the aforesaid children. If the Wife shall fail to support either or both of said children, the Husband may pay the cost thereof and deduct the same from said weekly alimony. Said payments shall continue during the life of the Wife and shall cease upon her death or upon the death of the Husband. Upon the remarriage of the Wife all alimony payments to her shall cease, but in lieu thereof the Husband shall pay the sum of Thirty-one and 25/100 Dollars ($31.25) per week for the support and maintenance of each child of said marriage until such child shall

attain the age of twenty-one (21) years, at which time the aforesaid payments for such child shall cease and terminate. Whether or not the Wife shall remarry, as each child shall attain the age of twenty-one (21) years, the aforesaid alimony shall be reduced by Thirty-one and 25/100 Dollars ($31.25) per week for each child thus attaining the age of twenty-one (21) years. It is the intention of the parties that when both of said children shall have attained the age of twenty-one (21) years the Husband shall pay to the Wife alimony in the sum of Sixty-two and 50/100 Dollars ($62.50) per week during her life and until her remarriage; provided, however, that no alimony shall be paid to the said Wife if the Husband shall die or if the Wife shall have meanwhile remarried or shall have died. It is also agreed that the said payments of alimony to the Wife shall be reduced by the sum of Thirty-one and 25/100 Dollars ($31.25) per week in the event of the death of either of said children before he shall have attained the age of twenty-one (21) years, and if both of said children shall die before attaining said age the alimony for said Wife shall be reduced by the sum of Sixty-two and 50/100 Dollars ($62.50) per week.

Paragraph 5 is hereby amended to read as follows:

5. (a) The Husband agrees to pay to the Wife the following sums:

(1) Fifteen Hundred Dollars ($1500.00) on or before five (5) days from the date of notice of entry

of the final decree of divorce between the parties in the action hereinbefore referred to.

(2) The sum of One Thousand Dollars ($1,000.00) on or before ninety (90) days after notice of entry of the said final decree of divorce.

(3) The sum of Five Hundred Dollars ($500.00) on or before One Hundred Fifty (150) days after notice of entry of the said final decree of divorce.

(b) (1) The aforesaid sum of Three Thousand Dollars ($3,000.00) is to be used by the Wife for the purpose of paying any and all bills of the Wife and as and for, any by way of counsel fees.

(2) The Wife warrants and represents that she has not incurred any obligations except those which will be paid for with the aforesaid sum of Three Thousand Dollars ($3,000.00), including counsel fees to her attorneys, and that the Husband will not be called upon to pay for any debts incurred by her, and she hereby agrees to indemnify and save the Husband harmless against any and all of such debts and, in the event the Husband shall be called upon to pay any claim asserted against him by reason of a debt incurred by the wife, he may stop paying the alimony provided for herein until the weekly alimony shall have aggregated the amount of such claim or claims.

In Witness Whereof, the parties have hereunto set their hands and seals.

Dated: April 29, 1949.

/s/ JOSEPH EISINGER.

Dated: May ..., 1949.

/s/ WILHELMINA EISINGER.

Accepted:

FOGLE, KIRTLEY,
CONNELLY & FORDHAM;

By /s/ WM. KIRTLEY.

State of California,
County of Los Angeles—ss.

On the 29th day of April, 1949, before me, personally appeared Joseph Eisinger, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

[Seal] /s/ JULIAN C. SORIN,
Notary Public in and for the
Said County and State.

My commission expires Aug. 24, 1951.

State of Florida,
County of Dade—ss.

On the 19th day of May, 1949, before me, personally appeared Wilhelmina Eisinger, known to me to be the person who executed the foregoing instru-

ment, and acknowledged to me that she executed the same.

/s/ LEWIS H. FOGLE, JR.,
Notary Public in and for the
Said County and State.

My commission expires Aug. 23, 1951.

Be and the same is hereby confirmed and adopted by this Court, and the parties hereto are

Ordered and Directed to abide by and fully perform the terms of this settlement in this decree.

Done and Ordered in Chambers at Miami, Dade County, Florida, this 26th day of May, A.D. 1949.

MARSHALL C. WISEHEART,
Circuit Judge.

A True Copy.

POWER OF ATTORNEY

Know All Men by These Presents: That each of us, namely, Jo Eisinger and Lorraine B. Eisinger, his wife, each now residing in Paris, France, has made, constituted and appointed, and now by these presents does make, constitute and appoint Aaron B. Rosenthal, an attorney at law duly licensed to practice as such in and by the State of California, and practicing as such in the City of Los Angeles, in the County of Los Angeles, State of California, my true and lawful attorney for me and in my name, place, and stead to conduct all proceedings

with reference to income tax and tax returns with reference thereto, either with the Treasury Department of the United States, the Commissioner of Internal Revenue thereof, the income tax unit, the Tax Court of the United States or any and all other administrative bodies having in charge the administration of the tax laws of the United States; giving power and authority unto said attorney to receive all certificates of over-assessments, refund checks and the like.

Dated at Paris, France, this 7th day of March, 1953.

/s/ JO EISINGER,

/s/ LORRAINE B. EISINGER.

In the presence of:

/s/ [Indistinguishable.]

Received and filed April 17, 1953, T.C.U.S.

Served April 20, 1953.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits that petitioners are individuals, husband and wife; that the returns for the periods here involved were filed with the Collector for the Los Angeles District of California. Denies the remaining allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the deficiencies as determined by the Commissioner are in income taxes for the calendar years 1949 and 1950, in the respective amounts of $3,433.58 for the calendar year 1949, and in the amount of $925.76 for the calendar year 1950. Denies the remaining allegations contained in paragraph 3 of the petition.

4. Admits the allegations of fact and concessions contained in the first, second, third, fourth and sixth unnumbered paragraphs set forth under the heading "4" in the petition; admits that the petitioners object to the "Computation of Tax, Taxable Year Ended December 31, 1949," as alleged in the fifth unnumbered paragraph under the heading of "4," but denies the remaining allegations of fact, if any, contained in said fifth unnumbered paragraph; denies that the contentions made by petitioner in all of these unnumbered paragraphs are proper, and denies that the respondent erred in any manner in his determination herein.

5. Denies the allegations of error contained in paragraph 5 of the petition and all subparagraphs thereof.

6. Admits that petitioner Jo Eisinger sold a story in 1949; admits the allegations of fact contained in the second and third unnumbered subparagraphs of paragraph 6 of the petition; denies the remaining allegations contained in paragraph 6 and all subparagraphs thereof.

7. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be sustained.

/s/ CHARLES W. DAVIS,
Chief Counsel, Bureau of
Internal Revenue.

Filed June 3, 1953, T.C.U.S.

[Title of Tax Court and Cause.]

STIPULATION AS TO FACTS

It is hereby stipulated, by and between the parties hereto, by their respective attorneys, that the following facts shall be taken as true and accepted evidence in the proceeding herein; provided, however, that this stipulation shall not waive or affect the right of either petitioners or respondent to introduce other evidence not at variance with the facts hereinafter stipulated, to wit:

1. Petitioners Jo Eisinger and Lorraine B. Eisinger are and were during the taxable years 1949 and 1950 husband and wife; and, although the former wife of the said Jo Eisinger, namely, Wilhelmine Eisinger, obtained on her own account a decree of absolute divorce from him, as hereinafter set forth, the said Jo Eisinger had previously, to wit, in 1943, obtained an uncontested absolute divorce from her and thereafter had married the said Lorraine B. Eisinger.

2. Petitioners herein filed joint individual income tax returns for the taxable years 1949 and 1950 on a calendar-year basis with the then Collector of Internal Revenue for the Sixth District of California at Los Angeles, California.

3. In his statutory notice in which he determined the deficiencies in income tax against the petitioners for the years 1949 and 1950 totaling $4,359.34, the following adjustments were made by the respondent:

Adjustment to Net Income
Taxable Year Ended December 31, 1949

Net Income as disclosed by return		$26,176.14
Unallowable deductions and additional income:		
(a) Ordinary income from sale of story "Confidential Squad"	$11,036.68	
(b) Automobile expense disallowed	289.24	
(c) Taxes disallowed	100.00	
(d) Unemployment insurance disallowed	9.00	

(e) Medical expenses disallowed	695.82	
(f) Alimony disallowed	1,925.00	14,055.74
Total		$40,231.88
Reduction of income:		
(g) Long-term capital gain from sale of story "Confidential Squad"		5,141.00
Net income adjusted		$35,090.88

Adjustment to Net Income
Taxable Year Ended December 31, 1950

Net income as disclosed by return	$32,622.33
Unallowable deduction:	
(a) Alimony disallowed	3,364.50
Net income adjusted	$35,986.83

4. Of the above adjustments for the year 1949, petitioners concede all except adjustment (f) "Alimony disallowed—$1,925.00." But petitioners contend, as set forth in their Petition, and respondent concedes, that the amount determined to be additional ordinary income under adjustment (a) in the amount of $11,036.68 is compensation for services rendered for a period of thirty-six months or more within the meaning of Section 107(b) of the Internal Revenue Code.

5. In the determination of the deficiency in income tax against petitioners for the year 1949, petitioners were allowed a total of six exemption credits.

6. The only adjustment resulting in the deficiency against petitioners in income tax for the year 1950, the disallowance of an alimony deduction in the amount of $3,364.50, is at issue in this proceeding. In the determination of said deficiency, petitioners are allowed a total of seven exemption credits.

7. The parties hereto expressly stipulate that if respondent is sustained by the Court in his disallowance of the alimony deductions in each of the years 1949 and 1950, petitioners are entitled to two exemption credits in each of the years 1949 and 1950 for the two children of petitioner Jo Eisinger by his former marriage with Wilhelmine Eisinger. Likewise, it is stipulated and agreed that if respondent's determination in this respect is not sustained by the Court, then petitioners are not entitled to these two exemptions for the taxable years 1949 and 1950.

8. Wilhelmine Eisinger instituted a suit for absolute divorce from the said Jo Eisinger in the Circuit Court of Dade County, Florida, in 1949, and on May 26, 1949, the final decree of divorce was entered, a copy of said decree being attached hereto as Exhibit 1A. At the time of the granting of the decree of absolute divorce to the said Wilhelmine Eisinger, on May 26, 1949, she and petitioner, Jo Eisinger, were the parents of two minor sons, Carl and Lloyd, who are and were the children referred to in the copy of said final decree of divorce.

9. In connection with the said suit for divorce the parties thereto entered into a written property

settlement agreement dated March 28, 1949, which subsequently was modified by a written agreement dated May 19, 1949. Said original agreement and said modification thereof were incorporated in said final decree of divorce and are embodied in Exhibit 1A, attached hereto. The provisions made thereby for payments to Wilhelmine Eisinger by Jo Eisinger form the basis of the contentions of petitioners herein which relate to disallowance of portions of the said payments made in the calendar years 1949 and 1950 by the respondent on the grounds that so much of the payments as were disallowed do not represent payments of alimony, but are payments for the support and maintenance of the minor children. The parties hereto stipulate and agree that the payments set forth as having been made by Jo Eisinger to Wilhelmine Eisinger pursuant to said written agreements and said judgment in the calendar years 1949 and 1950 were actually made in such years by said Jo Eisinger.

10. The determination of whether the payments in question were alimony payments or payments for the support and maintenance of the minor children is the only issue for the Court to resolve.

11. Inasmuch as it is agreed between the parties hereto that section 107(b) of the Internal Revenue Code is applicable to the proceeds received by Jo Eisinger on the sale of his story, "Confidential Squad," the petitioners are entitled to make a computation to determine whether they are entitled to any relief as a result of its application. Such

computations will be made under Rule 50 of the Court's Rules of Practice. For the purposes of making said computations the parties agree that the artistic work was commenced some time in 1945, was completed on or about January 7, 1949, and was sold on September 25, 1949, on which date Jo Eisinger received the sale price, and that all of the proceeds of the sale were received in the calendar year 1949.

12. There is attached hereto as Exhibit 2B a true and correct copy of the Income Tax Return of petitioners for the year 1946 which the parties agree reflects the net income for the purposes of computation of the possible tax benefit under Section 107(b).

13. There is attached hereto as Exhibit 3C a true and correct copy of the Income Tax Return of petitioners for the year 1947 which the parties agree reflects the net income for the purposes of computation of the possible tax benefit under Section 107(b).

14. There is attached hereto as Exhibit 4D a true and correct copy of the Income Tax Return of petitioners for the year 1948 which the parties agree reflects the net income for the purposes of computation of the possible tax benefit under Section 107(b).

Dated at Los Angeles, California, July 16, 1954.

/s/ DANIEL A. TAYLOR, E.C.C.
Chief Counsel, Internal Revenue Service, Counsel for Respondent.

/s/ AARON B. ROSENTHAL,
Counsel for Petitioners.

EXHIBIT 1A

[Ex. 1A attached to the above is identical to Ex. B attached to the Petition, pages 18 to 33 of this printed record.]

Filed August 13, 1954, T.C.U.S.

[Title of Tax Court and Cause.]

MEMORANDUM OPINION

LeMire, Judge:

Respondent determined deficiencies in petitioners' income tax for 1949 and 1950 in the respective amounts of $3,433.58 and $925.76.

The sole question presented is whether the respondent erred in determining that a portion of the payments made by Jo Eisinger to his former wife pursuant to a decree of divorce were for the support of his minor children and are not deductible under the provisions of sections 23(k) and (u) of the Internal Revenue Code of 1939.

All of the facts are stipulated.

Petitioners, Jo Eisinger and Loraine B. Eisinger, during the years involved were husband and wife and filed a joint return for the respective periods in question with the Collector of Internal Revenue for the Sixth District of California at Los Angeles. Since Loraine B. Eisinger is involved solely by virtue of filing a joint return, Jo Eisinger will hereinafter be referred to as petitioner.

Pursuant to a decree granted May 26, 1949, by the Circuit Court of Dade County, Florida, the marriage of petitioner to Wilhelmine Eisinger was dissolved. At that time they were the parents of two minor sons, Carl and Lloyd, 16 and 10 years of age, respectively.

A written property settlement agreement dated March 28, 1949, and modified on May 19, 1949, was incorporated in the decree of divorce. The pertinent part of the agreement reads as follows:

4. The Husband agrees to pay to the Wife, by way of alimony, the sum of One Hundred Twenty-five Dollars ($125.00) per week, commencing upon the date of the entry of the final decree of divorce in the action presently pending between the parties in the Circuit Court of the 11th Judicial Circuit of Florida, and in and for Dade County, in Chancery, No. 112550-C, and weekly thereafter, and in consideration thereof the Wife agrees to support the aforesaid children. If the Wife shall fail to support either or both of said children, the Husband may pay the cost thereof and deduct the same from said weekly alimony. Said payments shall continue during the life of the Wife and shall cease upon her death or upon the death of the husband. Upon the remarriage of the Wife all alimony payments to her shall cease, but in lieu thereof the Husband shall pay the sum of Thirty-one and 25/100 Dollars ($31.25) per week for the support and maintenance of each child of said marriage until such child shall attain the age of twenty-one (21) years, at which

time the aforesaid payments for such child shall cease and terminate. Whether or not the Wife shall remarry, as each child shall attain the age of twenty-one (21) years, the aforesaid alimony shall be reduced by Thirty-one and 25/100 Dollars ($31.25) per week for each child thus attaining the age of twenty-one (21) years. It is the intention of the parties that when both of said children shall have attained the age of twenty-one (21) years the Husband shall pay to the Wife alimony in the sum of Sixty-two and 50/100 Dollars ($62.50) per week, during her life and until her remarriage; provided, however, that no alimony shall be paid to the said Wife if the husband shall die or if the Wife shall have meanwhile remarried or shall have died. It is also agreed that the said payments of alimony to the Wife shall be reduced by the sum of Thirty-one and 25/100 ($31.25) per week in the event of the death of either of said children before he shall have attained the age of twenty-one (21) years, and if both of said children shall die before attaining said age the alimony for said Wife shall be reduced by the sum of Sixty-two and 50/100 Dollars ($62.50) per week.

* * *

6. (a) The Wife does and shall accept the provisions hereof in full satisfaction for her support and maintenance and for the support and maintenance of the minor children of the marriage. * * *

In his deficiency notice the respondent disallowed the sum of $1,925 in 1949 and the sum of $3,364.50 in 1950 of the total amounts claimed as deductions

for alimony payment to petitioner's former wife upon the grounds that such amounts were paid for the support of his minor children.

It is the petitioner's position that the separation agreement provides for the payment of a lump sum to his former wife without specifying the amount to be applied for the support of the children. It is argued that although the agreement provides for the reduction of the total amount payable to the wife by fixed amounts under certain contingencies, until such contingencies arise there is no way of determining what part of the lump sum is for the support of the children, and the rationale of the cases of Dora H. Moitoret, 7 T. C. 640, and Henrietta S. Seltzer, 22 T. C. 203, is applicable here.

The respondent contends that the agreement must be construed in its entirety, and when so considered it is clear that one-half the amount to be paid to the wife represents an amount fixed as payments for the support of the minor children.

It has been repeatedly held that an adequate consideration of the problem presented requires a construction of the agreement as a whole. Robert W. Budd, 7 T. C. 413, aff'd per curiam, 177 F. 2d 198; Warren Leslie, Jr., 10 T. C. 807; Mandel vs. Commissioner, 185 F. 2d 50, affirming a memorandum opinion of this court.

On this record, we hold that the amount for the support of the children is identifiable, and the cases

relied upon by the petitioner are factually distinguishable. It follows that the determination of the respondent on this issue must be sustained.

Effect will be given to the other adjustments as stipulated by the parties.

Decision will be entered under Rule 50.

Received February 23, 1956, T.C.U.S.

[Title of Tax Court and Cause.]

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation reflecting deficiencies in income tax in the amount of $2,458.22 for the taxable year 1949, and $925.76 for the taxable year 1950, respectively, is submitted on behalf of the respondent in compliance with the opinion of the Court determining the issues in this proceeding.

The computation is submitted without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court pursuant to the statute in such cases made and provided.

/s/ JOHN POTTS BARNES, R.E.M.
Chief Counsel, Internal
Revenue Service.

With prejudice to the right of appeal, it is agreed that the attached computation is in accordance with the opinion of the Tax Court in the above-entitled proceeding.

/s/ NORMAN GOODMAN,
Counsel for Petitioner.

Ap:LA:AA-EWM

Recomputation Statement

In re: Jo Eisinger and Loraine B. Eisinger
c/o Aaron B. Rosenthal
416 West 8th Street, Suite 1009-16
Los Angeles 14, California

Docket No. 47871

Year		Deficiency
1949	Income Tax	$ 2,458.22
1950	Income Tax	925.76
	Total	$3,383.98

Recomputation of tax liability has been prepared in accordance with the memorandum opinion of The Tax Court of the United States, filed February 29, 1956.

Year 1949

Adjustments to Net Income

Net income as disclosed by the deficiency notice dated January 29, 1953		$35,090.88
Nontaxable income and additional deductions:		
(a) Adjustment of income from sale of story "Confidential Squad"	$11,036.68	
(b) Adjustment of deduction for medical expense	551.81	11,588.49
Net income as adjusted, based on the memorandum opinion of The Tax Court of the United States, filed February 29, 1956, and Stipulation of Facts between the parties		$23,502.39

Explanation of Adjustments

(a) Net income is decreased $11,036.68, as a result of determination that proceeds of $11,036.68 received in the year 1949 from the sale of story, "Confidential Squad" represents Section 107 income to be allocated over the 36 months period January 1, 1946, through December 31, 1948. Computation of adjustment is as follows:

Proceeds from sale of story received in the year 1949		$11,036.68
Allocation of proceeds over 36 months period:		
Year 1946—12 months	$ 3,678.80	
Year 1947—12 months	3,678.89	
Year 1948—12 months	3,678.89	
Total		$11,036.68
Ordinary income from sale of story as shown by the deficiency notice		$11,036.68
Portion of Section 107 income received during the year 1949		None
Decrease in net income		$11,036.68

(b) Net income is decreased $551.81, representing adjustment in allowable deduction for medical expenses, computed as follows:

Total medical expenses		$ 3,937.91
Adjusted gross income as shown by the deficiency notice	$47,535.74	
Deduct:		
Section 107 income received from sale of story held to be income for the years 1946, 1947 and 1948	11,036.68	
Adjusted gross income as revised	$36,499.06	
5% of adjusted gross income as revised		1,824.95
Allowable deduction for medical expenses		$ 2,112.96
Deduction for medical expense allowed in the deficiency notice		1,561.15
Decrease in net income		$ 551.81

Computation of Tax

		Tax at Ordinary Rates		Alternative Tax
Net income		$23,502.39		$23,502.39
Less: Excess of net long-term capital gain over net short-term capital loss				125.00
Ordinary net income				$23,377.39
Less: Exemptions		3,600.00		3,600.00
Income subject to tentative tax		$19,902.39		$19,777.39
One-half of income subject to tentative tax		$ 9,951.20		$ 9,888.69
Tentative tax		$ 2,623.41		$ 2,602.15
Less:				
17% on $ 400.00	$ 68.00		$ 68.00	
12% on $2,223.41	266.81		—	
12% on $2,202.15	—	334.81	264.26	332.26
Balance		$ 2,288.60		$ 2,269.89
Total income tax—twice the above balance		$ 4,577.20		$ 4,539.78
Add: 50% of excess of net long-term capital gain over net short-term capital loss		—		62.50
Tax at ordinary rates (lesser tax)		$ 4,577.20		—
Alternative tax				$ 4,602.28
Income tax				$ 4,577.20
Add: Total increase in tax for the years 1946, 1947 and 1948 resulting from the treatment of income from the sale of story as Section 107 income, see Ex. A				3,348.86
Income tax liability				$ 7,926.06
Income tax liability disclosed by the return, Account No. 3250307, 6th California District				5,467.86
Deficiency in income tax				$ 2,458.20

Year 1950

Net income as disclosed by the deficiency notice dated January 29, 1953	$35,986.83
As adjusted, based on the memorandum opinion of The Tax Court of the United States, filed February 29, 1956, and Stipulation of Facts between the parties	No Change
Income tax liability (No Change)	$ 9,340.84
Income tax liability disclosed by the return, Account No. 3259637, 6th California District	8,415.08
Deficiency in income tax	$ 925.76

EXHIBIT A

Computation of tax for the years 1946, 1947 and 1948 under the provisions of Section 107 of the Internal Revenue Code on proceeds of $11,036.68 received by Jo Eisinger on the sale of his story "Confidential Squad" on September 25, 1949.

Proceeds received in year 1949 from sale of story.....		$11,036.68
Allocated over 36 months period:		
Year 1948—12 months.....	$ 3,678.89	
Year 1947—12 months.....	3,678.89	
Year 1946—12 months.....	3,678.90	
Total	$11,036.68	

	Year 1948		Year 1947		Year 1946	
	Jo Eisinger	Loraine B. Eisinger	Jo Eisinger	Loraine B. Eisinger	Jo Eisinger and Loraine B. Eisinger	Total
Total net income as shown by the returns.....	$18,591.03		$17,881.00		$12,888.36	
Add:						
Section 107 net income....	3,678.90		3,678.89		3,678.89	
Adjustment of deduction for medical expense	—		—		183.95	
Net income as revised.....	$22,269.93		$21,559.89		$16,751.20	

Each petitioner's community one-half	$11,134.97	$11,134.96	$10,779.95	$10,779.94	—	
Less: Exemption	1,000.00	1,000.00	1,000.00	1,000.00	$ 2,400.00	
Balance subject to tax	$10,134.97	$10,134.96	$ 9,779.95	$ 9,779.94	$14,351.20	
One-half	—		—		7,175.60	
Tax	2,691.29	2,691.29	2,565.18	2,565.18	1,712.68	
Less: 5%	134.56	134.56	128.26	128.26	—	
17% on $ 400.00	—	—	—	—	68.00	
12% on $1,312.68	—	—	—	—	157.52	
					$ 225.52	
Balance	$ 2,556.73	$ 2,556.73	$ 2,436.92	$ 2,436 92	$ 1,487.16	
Twice above balance	—	—	—	—	$ 2,974.32	
Income tax liability	$ 2,556.73	$ 2,556.73	$ 2,436.92	$ 2,436.92	$ 2,974.32	
Income tax liability disclosed by the return	1,957.46	1,957.46	1,845.04	1,845.04	2,007.74	
Increase in tax attributable to Section 107 income	$ 599.27	$ 599.27	$ 591.88	$ 591.88	$ 966.58	$3,348.88

Filed June 12, 1956, T.C.U.S.

The Tax Court of the United States
Washington

Docket No. 47871

JO EISINGER and LORAINE B. EISINGER,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the Court's Memorandum Opinion, filed February 29, 1956, the respondent filed a computation which the petitioners agree is in accordance with the opinion. Therefore, it is

Ordered and Decided: That there are deficiencies in income tax of $2,458.22 and $925.76 for the taxable years 1949 and 1950, respectively.

Entered June 13, 1956.

[Seal] /s/ C. P. LeMIRE,
Judge.

Served June 14, 1956.

Entered June 14, 1956.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 47871

JO EISINGER and LORAINE B. EISINGER,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR REVIEW

Taxpayers, the petitioners in this cause, by Jerome B. Rosenthal, Samuel P. Norton and Norman Goodman, counsel hereby file their petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States rendered on June 13, 1956, determining deficiencies in the petitioners' Federal Income Taxes for the calendar years 1949 and 1950, in the respective amounts of $2,458.22 and $925.76, and respectfully show:

I.

The petitioners, Jo Eisinger and Loraine B. Eisinger, are individuals, husband and wife, with their present residence at 9301 Flicker Way, Los Angeles, California. The income tax returns for the period here involved were filed with the Collector of Internal Revenue for the Los Angeles District of California.

II.

Nature of the Controversy

The controversy involves the proper determination of petitioners' liability for Federal Income Taxes for the calendar years 1949 and 1950.

On March 28, 1949, Jo Eisinger and his former wife, Wilhelmine Eisinger, entered into a written property settlement agreement. On April 29, 1949, this property settlement agreement was amended. The agreement, as amended, was incorporated in a final decree entered in the divorce action on May 26, 1949. Said property settlement agreement provides that Jo Eisinger agrees to pay to Wilhelmine Eisinger a stipulated sum per week.

On their 1949 and 1950 income tax returns, petitioners deducted the amounts of $3,850.00 and $6,677.00, respectively, as alimony paid to Wilhelmine Eisinger pursuant to said property settlement agreement. The Commissioner of Internal Revenue erroneously determined that of such payments, the amounts $1,925.00 and $3,364.50 represented payment for the support of Jo Eisinger's two minor sons for the years 1949 and 1950, respectively.

III.

The said petitioners, being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the Court, and by its decision entered pursuant thereto, desire to obtain

a review thereof by the United States Court of Appeals for the Ninth Circuit.

/s/ JEROME B. ROSENTHAL.

Duly verified.

Received and filed September 10, 1956, T.C.U.S.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 47871

JO EISINGER and LORAINE B. EISINGER,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

NOTICE OF FILING PETITION FOR REVIEW

To: John Potts Barnes, Chief Counsel, Internal Revenue Service.

You are hereby notified that the above-named petitioners did, on the 10th day of September, 1956, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of this Court hereto-

fore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 10th day of September, 1956.

/s/ HOWARD P. LOCKE,
Clerk, The Tax Court of the United States.

Service of copy acknowledged.

Filed September 10, 1956, T.C.U.S.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To: Chief Counsel, Internal Revenue Service, Washington, D. C.

You are hereby notified that the petitioners on the 7th day of September, 1956, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above-entitled cause. A copy of the petition for review is hereto attached and served upon you.

Dated at Beverly Hills, California, this 7th day of September, 1956.

Respectfully,

/s/ JEROME B. ROSENTHAL.

/s/ SAMUEL P. NORTON,

/s/ NORMAN GOODMAN,
Counsel for Petitioners.

Service of copy acknowledged.

Filed September 11, 1956, T.C.U.S.

[Title of Tax Court and Cause.]

ORDER ENLARGING TIME

For cause, it is

Ordered: That the time for filing the record on review and docketing the petition for review in the United States Court of Appeals for the Ninth Circuit is extended to December 9, 1956.

Dated: Washington, D. C., October 12, 1956.

[Seal] /s/ J. E. MURDOCK,
Judge.

Served October 15, 1956.

Entered October 15, 1956.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 14, inclusive, constitute and are all of the original papers on file in my office, as called for by the "Designation of Contents of Record on Review," including exhibits 1A thru 4D attached to the Stipulation as to Facts, in the case before the Tax Court of the United States docketed at the above number and in which the petitioners in the Tax Court have initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 19th day of November, 1956.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, Tax Court of the
United States.

[Endorsed]: No. 15387. United States Court of Appeals for the Ninth Circuit. Jo Eisinger and Loraine B. Eisinger, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed November 30, 1956.

Docketed: December 17, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.